

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,
Plaintiff,

v.

JEFFREY FERGUSON, et al.,
Defendants.

Case No. [17-cv-02390-JD](#)

**ORDER REVOKING
PLAINTIFF'S IN FORMA
PAUPERIS STATUS**

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed at screening. Plaintiff filed an appeal with the Ninth Circuit and the case has been referred back to this Court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." *See O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

1 Plaintiff alleged that he was improperly denied parole. He sought injunctive relief and
2 money damages. Plaintiff was informed that to the extent he wished to challenge his parole denial
3 or the disproportionality of his sentence, he must file a habeas petition. In order to recover
4 damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused
5 by actions whose unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983
6 plaintiff must first prove that the conviction or sentence has been reversed on direct appeal,
7 expunged by executive. Plaintiff was provided an opportunity to amend but failed to present a
8 cognizable claim. Plaintiff's action has no arguable basis in fact or law; therefore, plaintiff's in
9 forma pauperis status is **REVOKED**. The Clerk shall forward this Order to the Ninth Circuit in
10 case No. 18-15688.

11 **IT IS SO ORDERED.**

12 Dated: May 3, 2018

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JAMES DONATO
United States District Judge

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CERTIFICATE OF SERVICE

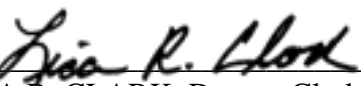
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 3, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Hardney
D-00599
Mule Creek State Prison
P.O. Box 409020
Ione, CA 95640

Dated: May 3, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO